

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-CR-190

TORONSE CARTER,

Defendant.

DEFENDANT'S MOTION TO REOPEN DETENTION HEARING

Defendant, Toronse Carter, represented by Craig S. Powell of Hart Powell, SC, hereby moves the Court to reopen the detention hearing in this matter under Title 18 U.S.C. § 3142(f) as there is now information that exists that was not known to Carter or his counsel at the time of the original detention hearing and that has a material bearing on whether there are conditions of release that will reasonably assure Carter's appearance and the safety of the community. In support thereof, Carter provides the following:

1. On November 7, 2017, Carter was charged alone in a three-count indictment with using a facility of interstate commerce to participate in a riot in violation of 18 U.S.C. §§ 2101(a)(2) and 2; maliciously damaging, by means of fire, the BP Gas Station at 3113 N. Sherman Blvd, which is a building used in interstate commerce in violation of 18 U.S.C. §§ 844(i) and 2; and knowing using fire at the same BP Gas Station to commit the felony offense of rioting, in violation of 18 U.S.C. §§ 844(h) and 2. (Dkt. #1)

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2. Carter appeared with counsel from the Wisconsin Federal Defender's office¹ for an arraignment and detention hearing on November 8, 2017. (Dkt. # 4) Carter entered not guilty pleas and, though the charges did not give rise to a presumption of detention, the Government moved for detention arguing that Carter posed a flight risk and danger to the community. (Id.) The Government cited the violent nature of the crimes, its view of the evidence as strong, Carter's mental health, and an anecdote alleging that Carter had threatened a Government witness 10 months before indictment as factors tending to show Carter was a flight risk and a danger. (Id.)

3. Counsel for Carter highlighted Carter's lack of criminal record, his lifelong residence in Milwaukee, his treatment for mental health issues with medication, and the fact that he was previously arrested and released without flight indicated that he was neither a flight risk nor a danger. Counsel asked for release with location monitoring and to his aunt as a third-party custodian. (Id.)

4. The Court ordered Carter detained, describing it as a "close case," noting that the weight of the evidence is strong. (Id.)

5. Undersigned counsel was subsequently appointed to represent Carter and, after one meeting with Carter at the Dodge County Detention Center, moved the Court on November 15, 2018 to determine Carter's competency to stand trial. (Dkt. # 8)

6. Magistrate Judge Joseph granted Carter's motion and ordered that he undergo a psychological evaluation for competency by Dr. Sheryl Dolezal. (Dkt. #14) Dr. Dolezal conducted her evaluation of Carter on February 5, 2018, which included a lengthy interview

1 Undersigned counsel was subsequently appointed to represent Carter.

and the administration of several assessment tools. (Dkt. #23) Dr. Dolezal issued a report of her evaluation on June 20, 2018; her ultimate opinion was that Carter was competent to proceed. (Id.) Dr. Dolezal's report /included the details of Carter's intellectual and cognitive testing, which placed him at the 0.3 percentile, "solidly within the Extremely Deficient" range. (Id.) Despite these extreme cognitive deficiencies, Dr. Dolezal opined that Carter was competent to stand trial, and offered recommendations centered around counsel spending more time with Carter and explaining things to him in simple terms to help ensure Carter understands what is going on. (Id.)

7. A competency hearing was held before Judge Joseph on August 7, 2018. Dr. Dolezal testified at the hearing consistent with her written report, and Judge Joseph found Carter competent to proceed. (Dkt. # 29) In so doing Judge Joseph acknowledged concerns with Carter's cognitive abilities, but agreed with Dr. Dolezal that some accommodations could be made to ensure that Carter understood what was happening and was able to assist in his own defense, also highlighting that "this all means that counsel will have to spend more time with Carter." (Dkt. # 29, pg 7)

8. Carter has filed objections to Judge Joseph's recommendations on Carter's competency, which are now pending before the District Court. (Dkt. # 31)

9. Pursuant to 18 U.S.C. § 3142(f), Carter respectfully requests that the Court reopen the detention hearing to take evidence on new information material to the determination of whether any conditions of release exist to assure Carter's appearance in court and the safety of the community.

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10. Specifically, Carter asserts that the true nature and extent of Carter's cognitive deficiencies, as outlined by Dr. Dolezal, were not known to the parties or Court at the time of the original detention hearing. This new information bears directly on Carter's danger to the community as well as the weight of the evidence against him. Furthermore, counsel for Carter has now had an opportunity to review the discovery and evidence against Carter, an opportunity not yet provided at the time of the original detention hearing, and would vigorously dispute that the evidence against Carter for the charges issued is strong.

WHEREFORE, Carter respectfully requests that the Court reopen the detention hearing in this matter to consider new information and argument relevant to the propriety of Carter's continued detention pending trial.

Dated at Milwaukee, Wisconsin, this 26th day of October, 2018

Respectfully submitted,

By: /s/ Craig S. Powell
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